


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Maurie Montague, Court Services
Alyson Brown, Second District
✓ Heather Mackenzie-Campbell, Audit Department
Julie Farnes, Finance Department
Kim Allard, Court Services Administrator
Pam Munson, Second District

From:  Brent Johnson, General Counsel

Re: Unpaid Plea in Abeyance Fees

Date: August 28, 2007

This memorandum is in response to your e-mail dated August 24, 2007 concerning unpaid plea in abeyance fees. The question is whether a plea in abeyance fee should remain on the court's accounts receivable ledger when a warrant is issued because a defendant has violated the plea in abeyance agreement. After reviewing the statute I think the accounts receivable should probably remain. However, there is probably some flexibility if we decide that it would be best to remove the receivable subject to being reinstated later.

Utah Code Ann. § 77-2a-4(1) states that

if, at any time during the term of the plea in abeyance agreement, information comes to the attention of the prosecuting attorney or the court that the defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

When a fee is ordered under a plea in abeyance agreement, that fee technically remains payable until the plea in abeyance agreement is terminated. According to the statute, the plea in abeyance agreement cannot be terminated until a hearing is held on the alleged violation.

Unfortunately, this may leave the plea in abeyance fee in limbo between the time that a warrant is issued and a hearing is held. On the one hand, if there has been a violation, it is most likely that the agreement will be terminated and the defendant sentenced. On the other hand, a defendant might show that there is a legitimate reason for not following through and the plea in abeyance agreement could be continued, with the defendant paying the plea in abeyance fee. Because of this, the plea in abeyance fee should probably remain on the books. However, if this creates problems for the courts, I would have little problem with the plea in abeyance accounts receivable being removed pending resolution of the alleged violation. The plea in abeyance fee could be reinstated after the hearing if the agreement is continued. If the agreement is not continued, there would not be a need to reinstate the plea in abeyance fee. The new accounts receivable would be the fine.

Please let me know if you have any questions about this.